

VIRGINIA CODE COMMISSION

Thursday, June 18, 2009 – 10 a.m.

General Assembly Building, 6th Floor
Speaker's Conference Room
Richmond, Virginia 23219

MEMBERS PRESENT: John S. Edwards; Ryan McDougale; William R. Janis; Jane M. Roush;
James F. Almand; Robert L. Calhoun; Thomas M. Moncure, Jr.; E.M. Miller, Jr.

MEMBERS ABSENT: R. Steven Landes, Frank S. Ferguson

OTHERS PRESENT: Brian Kennedy, LexisNexis; Joe Face, State Corporation Commission

STAFF PRESENT: Frank Munyan, David Cotter, Jane Chaffin

CALL TO ORDER

Senator Edwards called the meeting to order at 10:05 a.m.

APPROVAL OF MINUTES

Senator Calhoun made a motion to approve the minutes of the May meeting. Mr. Miller seconded the motion, and the motion was approved.

CODE OF 1819 DISTRIBUTION

The Code of Virginia contract between Lexis and the Code Commission provided for the printing of 200 copies of the Code of 1819. Copies were distributed to General Assembly members in March, as well as to Code Commission members and the Division of Legislative Services. After a brief discussion, the Code Commission approved the following distribution of the remaining 68 copies of the Code of 1819:

- 1 Attorney General Library
- 1 Clerk of the House
- 1 Clerk of the Senate
- 20 Code Commission members for discretionary distribution (2 per member)
- 14 Code Commission office
 - 1 Governor's Office
 - 2 Library of Virginia
 - 1 Stephen P. Halbrook, 3925 Chain Bridge Road, Suite 403, Fairfax 22030
 - 1 Supreme Court Library
 - William E. Thro, Christopher Newport University, 1 University Place, Newport News 23606
- 15 Virginia colleges and universities libraries (4-year public institutions)
- 2 Virginia Historical Society
- Virginia Law Schools (W&M, UVA, GMU, UR, W&L, Regent, Appalachian, Liberty)
- 8

TOTAL 68

**REVISION OF TITLE 64.1, WILLS AND DECEDENTS' ESTATES
PROPOSED WORK PLAN**

David Cotter presented the proposed work plan for the Title 64.1 recodification. Issues prompting the revision include the following:

1. Title 64.1 has not been recodified since 1968 (Acts Ch. 656). Many sections have not been amended since that time and contain obsolete language and style.
2. When recodified in 1968, the title had seven chapters. Since then, four chapters have been added to the title, one of which has been repealed. The title currently has ten chapters, of which some would more properly fit as articles within other chapters.
3. The title currently has one chapter (Ch. 2: Curtesy, Dower and Jointure) that has essentially been repealed, leaving only a statute saying that these estates no longer exist unless the right to these estates vested prior to January 1, 1991.
4. Placement of new sections and chapters into the existing framework is problematic and results in convoluted section numbering. Chapters added to the title since 1968 have been added the end of the title, which has compromised any previous organizational scheme.
5. Other provisions relating to wills and decedents' estates are located throughout the Code, creating a certain degree of difficulty for users of the Code. Many of these provisions could be considered for relocating to Title 64.2, including Title 26, Fiduciaries; Title 31, Guardians; and certain provisions of Title 55, Property and Conveyances.

Mr. Cotter presented the following names of individuals with expertise in this subject area who have volunteered to be part of the work group:

- Gary W. Lonergan, City of Alexandria Assistant Commissioner of Accounts
- John H. Rust, Jr., Fairfax City/County Commissioner of Accounts
- Philip R. Trapani, Jr., City of Norfolk Commissioner of Accounts
- Tommy L. Moore, Botetourt County Cir. Ct. Clerk
- James P. Cox, III, Michie, Hamlett, Lowry, Rasmussen & Tweel
- Chair of Wills, Trusts & Estates section of the Virginia Bar Association
- Helen Lewis Kemp, Virginia Estate Plans
- Dana G. Fitzsimons, McGuireWoods
- John T. Midgett, Midgett & Pretti
- Chair of Trusts & Estates section of the Virginia State Bar
- Martha L. Sotelo, Vaughan, Fincher & Sotelo
- Joseph E. Spruill, Virginia Bankers Association

Mr. Cotter proposed presenting the final report at the final meeting in 2010, with legislation introduced at the 2011 Session of the General Assembly.

**VIRGINIA BAR ASSOCIATION REQUEST TO
RECODIFY TITLE 55, PROPERTY AND CONVEYANCES**

Grice McMullan introduced himself and advised the members that he is currently serving as chair of the Real Estate Section of the Virginia Bar Association. One of the areas in which Mr. McMullan practices law is real estate and land use, and he indicated that he is often perplexed

1 by the ambiguity of Title 55, and the outdated provisions that it contains. The Real Estate
2 Section of the VBA has established a corrective legislation committee, made up of three
3 members headed by Susan Pezner, to identify sections that it believes need to be corrected,
4 e.g., ambiguous and obsolete provisions, and sections that have been torn apart by court
5 rulings.

6 Mr. Miller agreed that Title 55 needs to be rewritten and stated that this title has never gone
7 through the recodification process. Since the Commission will be completing its work on Title
8 6.1 shortly and is just beginning its work on Title 64.1, Mr. Miller suggested utilizing the
9 expertise of the VBA, asking VBA to begin its review of Title 55, and placing Title 55 on the
10 Code Commission's work plan next year. Mr. Miller also stated that esoteric areas that have
11 already been identified as obsolete could be handled as part of the Code Commission's
12 obsolete laws project.

13 Mr. Miller has appointed DLS attorney Kevin Stokes to begin working on the Title 55 revisions,
14 and David Cotter will assist Mr. Stokes after the Title 64.1 revision is complete.

15 Senator Calhoun made a motion, seconded by Judge Roush, to approve Mr. Miller's
16 recommendation. The motion was approved

17 **LEXIS-NEXIS**

18 Brian Kennedy reported that the incorporation of the 2009 legislation into replacement volumes
19 and Code of Virginia supplements is complete, and supplements are in the process of being
20 mailed out. The database used for the General Assembly's website should be available by July
21 1.

22 **REVISION OF TITLE 6.1, BANKING AND FINANCE**

23 Frank Munyan stated that proposed Title 6.2 chapters are posted on the Code Commission's
24 website as they are approved. So far, Mr. Munyan has received no comments from the web
25 postings.

26 Several issues will be revisited today:

- 27 1. Chapter 7, Acquisitions of Interests in Financial Institutions, was previously reviewed, but
28 the Commission decided move additional articles into this chapter, so it is back before the
29 Commission.
- 30 2. Staff followed up with Rick Pillow, Credit Union League, about the Code Commission's
31 decision to incorporate existing Chapter 4.1 of Title 6.1 as an article within the Credit Union
32 chapter in proposed Title 6.2. The Credit Union League previously noted its preference to
33 retain existing Chapter 4.1 at the chapter level in proposed Title 6.2. Mr. Pillow has indicated
34 that he is satisfied with the Code Commission's decision.
- 35 3. At the last meeting, the Commission asked that staff revisit recommendations regarding the
36 two specific sections (§§ 6.1-225.48 and 6.1-225.49) that apply to federal credit unions and
37 whether to retain in existing form, amend, or repeal § 6.1-225.50. The final recommendation
38 is to retain § 6.1-225-50 as is in the recodification.
- 39 4. Staff was asked to develop a chart showing the differences in the treatment of licensees
40 convicted of criminal offenses or subjected to civil actions. After review and discussion, the

1 Commission decided that attempting to provide uniformity between the various chapters in
2 the recodification process would substantively change the law and, therefore, the
3 Commission will not pursue this matter.

4 5. In Chapter 7, Acquisitions of Interests in Financial Institutions, the Commission previously
5 discussed an issue relating to foreign entities seeking to acquire Virginia companies. Staff
6 recommends deleting subsection C of § 6.1-393.1 concluding that the provision is obsolete
7 because it is superseded by the Riegle-Neal Interstate Banking and Branching Efficiency
8 Act of 1994 and by § 6.1-399 of the Code of Virginia.

9 6. In § 6.2-707, relating to repeal of Section 408 of National Housing Act, Section 10 of the
10 Home Owners' Loan Act currently provides for the registration and reports by savings and
11 loan holding companies and was suggested as a replacement.

12 Chapter 7, Acquisitions of Interests in Financial Institutions

13 Mr. Munyan stated that he would begin with Article 2, Acquisitions by Out-of-State Bank Holding
14 Companies and General Business Corporations, since Article 1 was reviewed at the last
15 meeting.

16 Based on general Commission policy to avoid using statements of purpose in recodifications,
17 staff asked the Commission about retaining or removing sections regarding construction of
18 articles (§§ 6.2-712 and 6.2-721). During discussion, it was mentioned that sometimes such
19 statements are helpful to judges, and can help tip the balance when the decision is a close call.
20 However, it was noted that this particular section would provide no guidance to a judge. Senator
21 Calhoun made a motion, seconded by Mr. Miller, to delete §§ 6.2-712 and 6.2-721. After further
22 discussion, the Commission decided to handle the removal of such sections on a case-by-case
23 basis. The motion carried.

24 In Article 3, Acquisition of Credit Card Banks by General Business Corporations. Senator
25 Calhoun suggested that the work group review Article 3 and determine if this article is obsolete
26 since the model is not used.

27 Chapter 8, Banks

28 Mr. Munyan suggested that the Commission consider changing the word "company" in the
29 definition of "bank holding company" in proposed § 6.2-800 (§ 6.1-4) to "entity" or "corporation,"
30 since the term "bank holding company" is no longer used. Senator Edwards made a motion to
31 change "company" to "corporation." The motion was seconded by Senator Calhoun and
32 approved.

33 The Commission discussed to reference to "natural person" in proposed § 6.2-803 (§ 6.1-5).
34 The consensus of the Commission is to modernize the terminology by replacing "natural
35 person" with the word "individual."

36 During the discussion of Article 4, Bank Mergers and Conversions, staff raised the issue of
37 incorporating federal law by reference. Mr. Munyan pointed to terminology inconsistencies
38 within Title 6.1 when incorporating federal law into the Virginia statutes. Within Title 6.1 (and
39 throughout the Code) are references to particular acts of Congress and to the United States
40 Code. For example, § 6.1-33 (lines 685-688) refers to an act of Congress "as it may hereafter
41 be amended." At other times, the federal act may be referred to "as amended from time to time"
42 or "as amended." Mr. Munyan mentioned that the Commission removed such references during

1 the recodification of the Agriculture title (Title 3.2) and queried if he should do the same in
2 proposed Title 6.2.

3 The Code Commission discussed the incorporation by reference issue at length. The issue
4 involves delegations of authority and whether the Virginia legislature wishes to prospectively
5 adopt amendments to federal law. Some members expressed the opinion that if a federal act
6 effective at a particular time should apply, a date should be specified; otherwise, if the desire is
7 to track subsequent changes in federal law, "as amended" should be appended to the federal
8 citation. Other members do not believe that this issue lends itself to a uniform policy.

9 Staff stated that, for consistency, he has appended the phrase "as amended from time to time"
10 to the federal citations in the proposal and asked for further guidance from the Commission. No
11 consensus was reached on this issue, and Mr. Miller stated that he would have the issue
12 researched further and bring the findings to the next meeting. In the meantime, the Commission
13 directed staff to return such language to its existing form for now.

14 While reviewing Articles 6 (Interstate Branching) and 7 (Interstate Bank Mergers), Mr. Munyan
15 referred to the Commission's earlier discussion of Chapter 7 regarding "construction" provisions.
16 The consensus of the Commission is to delete § 6.2-837, applicable language in § 6.2-848, and
17 § 6.2-850 as they provide no direction on how the article should be construed.

18 The Commission discussed asking the publishers to add historical references to repealed
19 purpose sections when such provisions are removed during the recodification Ms. Chaffin will
20 check with the publishers to determine procedures for implementing this practice.

21 The definition of "bank" in § 6.2-840 was discussed, and an apparent error was noted in the
22 federal citation. Judge Almand made a motion, seconded by Senator McDougle, to conform the
23 definition of "bank" in § 6.2-849 to the definition of "bank" in § 6.2-836. The motion was
24 approved.

25 The Commission discussed the language "may own and transact business" on line 2406 in
26 § 6.2-888 B and the recommendation to delete the phrase "own and." The Commission decided
27 to retain the phrase "own and."

28 Based on earlier discussion of incorporation of federal laws, in § 6.1-982, at the end of line 2736
29 through 2737, unstrike "or any amendments thereto" and delete "from time to time."

30 Mr. Munyan mentioned that the phrase "unless the context requires otherwise" in § 6.2-912 is
31 not in existing language, but is standard boilerplate language normally used in definition section
32 introductions. After discussion, Judge Roush made a motion to remove the phrase from this
33 section. The motion was seconded by Senator Edwards and approved.

34 The Commission discussed the proposed deletion of the provisions regarding trust companies
35 in proposed § 6.2-916 (§ 6.1-102) and decided to retain the language.

36 At Commission direction, staff will delete the phrase "or hereafter" as unnecessary in proposed
37 § 6.2-925.

38 In § 6.2-940 (line 3528), staff will strike the added phrase "orally or in writing" as unnecessary.
39 This change was also made in the Credit Union chapter. Also, Senator Edwards asked staff to
40 add the word "false" before "statement" on line 3528. Mr. Miller suggests that this is a
41 substantive change and should be noted as such in the recodification report. Staff pointed out
42 that this change would need to be made in parallel provisions applicable to trust companies.

1 The Commission discussed subsection A of § 6.2-938 (§ 6.1-111). Judge Roush expressed
2 concerns with the proposed terminology changing "trade or deal as a bank" to "engage in
3 activities of a bank" because the proposal seems to limit a person from private lending. At
4 Commission direction, staff will use the "trade or deal" language in this subsection.

5 Standardization of penalties in subsections B and C of § 6.2-943 were discussed. For the
6 penalties to correspond to the classes for felonies and misdemeanors set out in §§ 18.2-10 and
7 18.2-11, the closest match to existing language is a Class 5 felony. Mr. Miller made a motion,
8 seconded by Judge Roush, to amend the language to reflect a Class 5 felony. The motion was
9 approved.

10 Chapter 17, Mortgage Loan Originators

11 Proposed Chapter 17 was passed by the 2009 General Assembly as Chapter 16.1 of Title 6.1 in
12 response to the federal SAFE Mortgage Licensing Act. Very few changes are proposed.

13 Mr. Munyan stated that Registry-approved education and testing requirements are unclear in
14 §§ 6.2-1709 E and 6.2-1710 G (§§ 6.1-431.10 and 6.1-431.11) and pointed to suggested
15 changes in the drafting notes. Mr. Miller made a motion, seconded by Judge Roush, to
16 incorporate Mr. Munyan's suggested amendments. The motion was approved.

17 **OTHER BUSINESS**

18 The Commission discussed future meeting dates. The next meeting was tentatively set for July
19 30. Jane Chaffin will poll the members and confirm future meeting dates. (*July 30, August 27,*
20 *October 1, and December 3 meeting dates are confirmed.*)

21 **PUBLIC COMMENT**

22 No one from the public came forward during the public comment period.

23 **ADJOURN**

24 Senator Edwards adjourned the meeting at 2:50 p.m.